

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

KEVIN BRISTO

CIVIL ACTION NO. 09-cv-2189

VERSUS

JUDGE HICKS

U.S. COMMISSIONER SOCIAL
SECURITY ADMINISTRATION

MAGISTRATE JUDGE HORNSBY

REPORT AND RECOMMENDATION

Kevin Bristo (“Plaintiff”), represented by counsel, filed this civil action to appeal a decision of the Commissioner of the Social Security Administration. The Commissioner filed an answer, including a transcript of the administrative record. A deadline was set for Plaintiff to file a brief. Counsel’s office contacted the court and reported that counsel had experienced a health problem that would prevent him from timely filing a brief, so the court extended the deadline through June 30, 2010. Counsel, on that deadline, filed a motion for extension of time, and he was granted another extension through July 16, 2010.

Nothing happened in the case until November 2010, when counsel filed a motion to withdraw. Counsel reported that, due to the number of cases he had pending, there was no way he could complete briefing within a reasonable time. He asked to withdraw as counsel in this case, as he has done in a number of other cases before this court. Counsel stated that he had advised Plaintiff of his intention and given him the name and telephone number of a local attorney who had expressed interest in reviewing the appeal and might be willing to

enroll. Counsel had also provided Plaintiff the phone number for an attorney referral service. A copy of the motion was served on Plaintiff.

The court granted counsel's motion to withdraw and ordered that Plaintiff file a brief within 30 days, or by December 2, 2010. A copy of the order was mailed to Plaintiff at his home address. More than one month has passed since Plaintiff's deadline to file a brief. Plaintiff has not filed a brief, requested an extension of time, enrolled counsel, or taken any other action of record since the deadline was set. The court cannot perform its appellate role with respect to this action without a proper brief from Plaintiff. Under these circumstances, dismissal without prejudice is warranted.

Accordingly,

IT IS RECOMMENDED that Plaintiff's complaint be dismissed without prejudice for failure to prosecute.

Objections

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Civ. P. 6(b). A party may respond to another party's objections within seven (7) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendation set forth above, within 14 days after being served with a copy, shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. See Douglass v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED in Shreveport, Louisiana, this 18th day of January, 2011.



MARK L. HORNSBY
UNITED STATES MAGISTRATE JUDGE